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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

15 CR 38 (AJN)

6 CHENG LE,

7 Defendant.
-----x

8 New York, N.Y.
9 January 23, 2015
10 11:40 a.m.

12 Before:

13 HON. ALISON J. NATHAN,

14 District Judge

15 APPEARANCES

16 PREET BHARARA,
17 United States Attorney for the
18 Southern District of New York
19 ILAN T. GRAFF
20 Assistant United States Attorney
21 PATRICK JEROME BRACKLEY
22 Attorney for Defendant

F1NKCHEC

1 THE DEPUTY CLERK: U.S. v. Cheng Le. Parties, state
2 your names for the record, starting with the government.

3 MR. GRAFF: Good morning, your Honor. Ilan Graff, for
4 the government.

5 THE COURT: Good morning, Mr. Graff.

6 MR. BRACKLEY: Good morning, Judge. Patrick Brackley,
7 for the defendant. Good morning.

8 THE COURT: Good morning, Mr. Brackley. Good morning,
9 Mr. Le.

10 We are here for an arraignment on 15 CR 38, and then
11 an initial conference.

12 Mr. Le, I am Judge Nathan. I'm the judge who will be
13 presiding over this case going forward.

14 Let me begin with the indictment. Mr. Le, have you
15 received a copy of the indictment?

16 THE DEFENDANT: Yes.

17 THE COURT: Have you had time to review it with your
18 attorney?

19 THE DEFENDANT: No.

20 THE COURT: No? Okay. I'll give you as much time as
21 you need. I'll step off the bench and come back after you've
22 had some time to discuss the indictment with Mr. Brackley.

23 (Pause)

24 THE COURT: Mr. Brackley, have you had an opportunity
25 to go through the indictment with your client?

F1NKCHEC

1 MR. BRACKLEY: I have, Judge.

2 THE COURT: Okay, thank you.

3 Mr. Le have you had enough time to review the
4 indictment with Mr. Brackley?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: I'm sorry?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Okay, thank you.

9 You have a right for me to read the indictment to you
10 here in public or you can waive the public reading. Do you
11 waive the public reading?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: I'm going to ask you how you'd like to
14 plead to the charges -- guilty or not guilty?

15 THE DEFENDANT: Not guilty.

16 THE COURT: All right, thank you.

17 Let's turn then to the scheduling conference.

18 Mr. Graff, could you please provide a report to the Court, in
19 terms of summary of the charges, what has occurred so far, talk
20 to me about the status of discovery and include in that
21 discussion what types of evidence you expect to produce and how
22 long it will take to produce it.

23 MR. GRAFF: Absolutely, your Honor. The facts
24 underlying --

25 THE COURT: Pull up the mic, please, as close to you

F1NKCHEC

1 as possible. Thank you.

2 MR. GRAFF: Yes, your Honor. The facts underlying the
3 charges are set forth in some detail in the complaint. Just to
4 complete your Honor's understanding of information that came to
5 the government's attention after the complaint was prepared, in
6 addition to the facts, again, outlined in the complaint, the
7 search of the defendant's apartment also yielded a quantity of
8 seeds which subsequent lab testing confirmed were in fact
9 castor seeds from which ricin was derived.

10 Additionally, when shutting down the defendant's
11 computer or the laptop that was on in the defendant's apartment
12 at the time of his arrest, the FBI team that was shutting it
13 down took screenshots of a website for the black marketplace on
14 which the transaction discussed in the complaint occurred, and
15 that account was logged into using one of the log-ins
16 affiliated with the person identified in the complaint as the
17 ricin buyer. There were also multiple chat windows that were
18 open using the monikers FNU and WID, which of course could
19 stand for "when in doubt."

20 In terms of discovery, your Honor, all of the
21 materials that are currently in the government's possession
22 were produced to the defendant or to defense counsel earlier
23 this week, on January 21st. Those materials include roughly
24 300 pages of documents, which include transcripts of the
25 communications outlined in the complaint, certain search

F1NKCHEC

1 warrants, including for the defendant's apartment, for
2 electronic devices, and for other materials, a number of
3 financial records, and the lab results to which I averted a
4 moment ago related to the castor seeds.

5 There are also some digital materials, specifically
6 search photos from the defendant's apartment, audio and video
7 recordings from the defendant's postarrest statement, and video
8 from within the shipping store of the defendant picking up the
9 package. I've also advised defense counsel that the government
10 has available for him the contents of the majority of the
11 electronic devices that were seized from the defendant's
12 apartment during the search that began on December 23rd. If
13 defense counsel can provide us with a two-terabyte hard drive,
14 as soon as that happens, then those materials will also be
15 available for his review.

16 I've noted for defense counsel and for your deputy
17 that there is one outstanding piece of discovery, specifically,
18 the laptop that I mentioned a few moments ago that was logged
19 in at the time of the defendant's arrest. There is complicated
20 encryption on that laptop and I have been advised by those who
21 know far more about decrypting things than I that it should
22 take between 90 and 120 days to have that decrypted to the
23 extent that the government can access it for its own purposes
24 and certainly for it to be able to provide timely discovery to
25 Mr. Brackley. The people involved in the process are aware of

F1NKCHEC

1 the need for speed so that these proceedings can move apace.

2 What I can tell the Court is that, first of all, should it
3 become possible to access the device sooner, we will of course
4 advise the Court and advise Mr. Brackley.

5 Additionally, having discussed the discovery with
6 Mr. Brackley, and in particular the implications for this
7 outstanding piece of discovery, for purposes of motions in the
8 trial calendar, Mr. Brackley did not think -- and he should of
9 course correct me if I am wrong -- Mr. Brackley did not think
10 that there was a reason to delay the motion schedule until the
11 contents of the computer were in hand -- that is, any motions
12 related to those contents he can discern on the face of the
13 search warrants and the materials already available to him --
14 nor did he think that it would interfere with the timing of the
15 trial schedule that we discussed with your deputy.

16 THE COURT: All right, thank you.

17 Mr. Brackley?

18 MR. BRACKLEY: That's correct, Judge.

19 THE COURT: So you've discussed a schedule with my
20 deputy. Let me ask you, Mr. Brackley, just to confirm, in
21 light of what the government has described as the quantity and
22 nature of the discovery that you have in hand now all but what
23 remains to be extracted from the encrypted laptop, what you
24 would like to set as an outside date by which to file your
25 initial motions if you have any available.

F1NKCHEC

1 MR. BRACKLEY: Well, Judge, we've agreed on
2 March 17th, and I think there's a response schedule. I believe
3 that's acceptable and I think we have a trial date of
4 August 3rd, which is acceptable as well. Mr. Graff and I are
5 working very well. We will have the discovery turned over and
6 we will be ready to file the motions and go to trial, should
7 that be the path of this case, Judge.

8 THE COURT: Okay. That's fine.

9 So we will set March 17th as a date to file motions.
10 I would like to be notified when the encrypted laptop data is
11 produced to the defendant, Mr. Graff.

12 MR. GRAFF: Yes, your Honor.

13 THE COURT: Just put in a letter indicating that.

14 Let's say, Mr. Brackley, within a week of that, if you
15 want to propose altering the schedule in light of what you
16 receive, if you would put in a letter letting me know
17 otherwise, I'll assume we can continue apace.

18 MR. BRACKLEY: Yes, Judge.

19 THE COURT: Thank you.

20 Opposition to any motions that are filed, we will set
21 for April 3rd, replies by April 10th.

22 Mr. Brackley, based on what you anticipate now, do you
23 think we should put a hearing date on the calendar? Or is it
24 too soon to tell?

25 MR. BRACKLEY: Too soon to tell, Judge, but I would

F1NKCHEC

1 wager that we will not need a hearing.

2 THE COURT: When motions come in, if they do, I'll
3 assess whether I want to at least get a date on the calendar in
4 the event we need it. Okay?

5 MR. BRACKLEY: Yes.

6 THE COURT: August 3rd, 2015, we can set as our trial
7 date. That's the request of the parties?

8 MR. GRAFF: Yes, your Honor.

9 MR. BRACKLEY: Yes, Judge.

10 THE COURT: All right. We will set August 3rd, 2015,
11 as our firm trial date. And, again, Mr. Brackley, I'll invite
12 you, just because of the delay in receiving the outstanding
13 discovery, if you want to propose an alteration to the
14 schedule, just let me know soon after you receive it and I will
15 bring you in and we will discuss the schedule again.

16 I do set firm trial dates so that we can all do what
17 we need to do in advance of the trial date and set our
18 expectations around that.

19 Mr. Le, I say this at every proceeding when I set a
20 trial date, though there's no reason to think it would be so
21 here, but sometimes defendants ask for a new counsel to come in
22 to the case. As I say, I have no reason to think that would be
23 an issue here, but if you were to make a request for someone
24 else to come into the case, I'll hear that request but anyone
25 new who comes into the case has to work with the schedule that

F1NKCHEC

1 we are setting today. Is that point clear?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: All right, thank you.

4 Mr. Brackley, do you have any applications?

5 MR. BRACKLEY: Only, Judge, to exclude the time; other
6 than that, no.

7 THE COURT: All right. And I will hear from Mr. Graff
8 on speedy trial.

9 MR. GRAFF: Yes, your Honor. In light of what's been
10 discussed here, and in particular, to give defense counsel -- I
11 know that Mr. Brackley has already begun to engage with the
12 discovery and I imagine he will need additional time to do
13 that, as he prepares for motions and potentially trial and
14 perhaps to allow the parties to discuss a disposition, the
15 government would ask for time to be prospectively excluded from
16 today's date up to and including, in the first instance,
17 March 17th, the motions deadline, and, the government submits
18 that would be, in this case, in the interests of justice.

19 THE COURT: And no objection, Mr. Brackley?

20 MR. BRACKLEY: No objection.

21 THE COURT: All right. I will exclude time until the
22 motions date. I find that the ends of justice served by
23 granting an exclusion from speedy trial computations for the
24 period from today's date through March 17, 2015, outweigh the
25 interests of the public and the defendant in a speedy trial

F1NKCHEC

1 because this time is necessary for the continued production of
2 discovery by the government, review of all the discovery by the
3 defendant, time for the defendant to consider and prepare any
4 potential motions in advance of that date.

5 If I do determine that we will set a hearing date,
6 I'll put out an order to that effect soon after March 17th.

7 Mr. Graff, anything else I can address at this time?

8 MR. GRAFF: No. Thank you, your Honor.

9 THE COURT: Mr. Brackley?

10 MR. BRACKLEY: No, Judge. Thank you.

11 THE COURT: Thank you, everyone. We are adjourned.

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